

**BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C. 20554**

In the Matter of:	)	
	)	
Telecommunications Carriers Eligible to	)	
Receive Universal Service Support	)	WC Docket No. 09-197
	)	
Petition of Redwire, Inc., for Designation	)	
as an Eligible Telecommunications Carrier	)	
Pursuant to Section 214(e)(6) of the Act	)	

**COMMENTS OF THE PUBLIC UTILITY DIVISION OF THE OKLAHOMA  
CORPORATION COMMISSION**

The Public Utility Division of the Oklahoma Corporation Commission (“PUD”) hereby submits its comments in response to the *Petition*<sup>1</sup> of Redwire, Inc. (“Redwire” or “Petitioner”) for Designation as an Eligible Telecommunications Carrier (“ETC”) by the Federal Communications Commission (“FCC”).

**Summary**

Redwire’s *Petition* for ETC designation asserts that neither the State of Oklahoma generally nor the Oklahoma Corporation Commission (“OCC”) specifically, have jurisdiction over Redwire or its request for ETC designation within the Otoe-Missouria Tribal lands in Oklahoma.<sup>2</sup> PUD is aware of and understands the process established by the FCC in the *Twelfth Report and Order*<sup>3</sup>, whereby the FCC can, after determining jurisdiction, grant ETC designation in certain circumstances. However, it is PUD’s position that the Petitioner has not met its burden

---

<sup>1</sup> *Petition of Redwire, Inc. for Designation as an Eligible Telecommunications Carrier Pursuant to Section 214(e)(6)*, WC Docket No. 09-197, filed February 19, 2019 (“*Petition*”).

<sup>2</sup> *Id.*, pgs. 2–3, 5 (PUD would note that the filed document does not have page numbers so all references are based on a manual count of pages).

<sup>3</sup> *Federal-State Joint Board on Universal Service; Promoting Deployment and Subscribership in Unserved and Underserved Areas, Including Tribal and Insular Areas*, CC Docket No. 96-45, FCC 00-208, released June 30, 2000, *Twelfth Report and Order*, Memorandum Opinion and Order, and Notice of Proposed Rulemaking (“*Twelfth Report and Order*”).

of proof regarding jurisdiction in this matter. It is important to note, the OCC has granted ETC designations to a multitude of telecommunications providers within the very area for which Redwire is asking the FCC to provide designation. PUD is not aware of any party having sought intervention to dispute the jurisdiction of the OCC in previous requests for ETC designation in these areas, or in any other request for ETC designation in any Tribal land in Oklahoma.

For the FCC's further consideration, PUD will address facts that distinguish the *Petition* of Redwire from petitions of other Tribally owned entities for which the FCC has taken jurisdiction and granted ETC designation in the past, which were cited by Redwire in its *Petition*.

Additionally, based on the information filed in the *Petition*, PUD is unable to clearly identify the specific location of the service area being requested for designation and how that service area comports with the boundaries of the Tribal lands at issue. Finally, PUD believes that the Petitioner failed to meet the administrative requirement to provide notice of this *Petition* to the OCC.

### **I. Jurisdictional Question**

The FCC's *Twelfth Report and Order* illustrates the designation process for carriers serving Tribal lands. Here the FCC states "...we conclude that this Commission may resolve the threshold question of whether a carrier seeking eligibility designation for service provided on tribal lands is subject to the jurisdiction of the state commission."<sup>4</sup> The FCC goes on to articulate what this jurisdictional analysis will entail:

Evaluating the extent to which a state commission has jurisdiction over activities conducted on tribal lands, whether by members or non-members of a tribe, will involve questions of whether state regulation is preempted by federal regulation, whether state regulation is consistent with tribal sovereignty and self-determination, and whether a tribe has consented to state jurisdiction in treaties or otherwise. Thus, we find that such jurisdictional determinations, which will

---

<sup>4</sup> *Id.*, ¶ 116.

involve an analysis of principles of tribal sovereignty, federal Indian law, treaties, and state law, may be appropriately performed by this Commission.<sup>5</sup>

The FCC also requires that “[t]he petitioner must set forth in its petition the basis for its assertion that it is not subject to the state commission’s jurisdiction, and bears the burden of proving that assertion.”<sup>6</sup> The FCC goes further to say, “[w]e emphasize that this is a strict burden and that generalized assertions regarding the state commission’s lack of jurisdiction will not suffice to confer jurisdiction on this Commission under section 214(e)(6).”<sup>7</sup>

Redwire makes several assertions with regard to meeting its burden of proof on this jurisdictional question. The first assertion is that the Otoe-Missouria Tribe “has never consented to state jurisdiction...”<sup>8</sup> While PUD certainly is not aware of all possible instances of actions or non-actions taken by the Otoe-Missouria Tribe in this regard, PUD is aware that, within the service area for which Redwire is asserting that the OCC has no jurisdiction, more than twenty (20) carriers have been designated as ETCs by the OCC. In no case has the Otoe-Missouria Tribe, or any other entity, raised a question of the OCC’s jurisdiction to grant ETC designation in this, or any other area of Tribal lands in Oklahoma.

PUD acknowledges that none of these twenty (20) carriers asserted or otherwise demonstrated that they were Tribally owned during the ETC designation process. However, PUD understands the jurisdictional question in the ETC designation process to be contingent on where the service is to be provided (e.g., Tribal lands) as opposed to the status of the entity requesting to provide the service (with the exception of the requirement to be a common carrier). As indicated above, the FCC has framed this analysis as “...jurisdiction over activities conducted

---

<sup>5</sup> *Id.*, ¶ 117.

<sup>6</sup> *Id.*, ¶ 120.

<sup>7</sup> *Id.*, ¶ 122.

<sup>8</sup> *Supra*, pg. 6, n1.

on tribal lands, whether by members or non-members of a tribe...”<sup>9</sup> In further support of the idea that this analysis is based on the area for which the designation is requested, the FCC concludes that “a carrier seeking a designation of eligibility to receive federal universal service support for telecommunications service *provided on tribal lands* may petition the Commission for designation under section 214(e)(6)...”<sup>10</sup> (emphasis added)

For these reasons, PUD questions whether the Petitioner’s unsupported assertion that the Otoe-Missouria Tribe has never consented to state jurisdiction is adequate. This essentially leaves the FCC in the position of proving a negative in order to verify and accept this assertion.

The Petitioner also proclaims that “federal treaties are the ‘supreme law of the land’ of the U.S. federal government, as established by Article VI in the United States Constitution, a fact readily acknowledged by the Commission in the *Twelfth Report and Order*.”<sup>11</sup> However, Petitioner makes no reference to how any particular federal treaty or any other legal or legislative action is related specifically to the Otoe-Missouria Tribe and the area for which Redwire is seeking ETC designation. Again, PUD questions whether the Petitioner has provided enough information to allow the FCC to perform the “...particularized inquiry guided by tribal sovereignty, federal Indian law, and treaties, as well as state law”<sup>12</sup> that is required with regard to requests of this nature under Section 214(e)(6).

Finally, in support of its request for the FCC to take jurisdiction, Petitioner made reference to certain cases where the FCC exercised jurisdiction and granted ETC designation to certain Tribally owned entities for service areas consisting of specific Tribal lands. However, in order to give weight to the analysis of other such requests for designation, the facts associated

---

<sup>9</sup> *Supra*, ¶ 117, n5.

<sup>10</sup> *Twelfth Report and Order*, ¶ 120.

<sup>11</sup> *Petition*, pg. 6.

<sup>12</sup> *Twelfth Report and Order*, ¶ 122.

should be identical or at least significantly similar to those in this *Petition*. However, PUD's cursory review of some of the other petitions finds that there are differences that may well diminish the value of their support with regard to this *Petition*. For instance, none of the referenced applications involve establishing the FCC's jurisdiction and grant of ETC designation within service areas in Oklahoma. As the FCC has observed, "[a] large part of Oklahoma was once Indian Territory, and as the Tribal Nations of Oklahoma experienced many changes to their land tenures, Tribal lands in Oklahoma are an excellent example of that intricate legal history."<sup>13</sup> The FCC goes on to say in Footnote No. 520 to this paragraph,

Oklahoma Tribal lands represent 'the most extensive, complex, and difficult body of laws with which the practitioner has to deal', as 'all land titles in Oklahoma stem from treaties with Indian tribes and acts of Congress vitalizing treaty provisions' as well as subsequent acts of Congress, 'statutes, ruling cases, and departmental regulations and interpretations.' See W.F. Semple, *Oklahoma Land Titles Annotated* at v-vi (1952).

The FCC has rightly recognized the very complex nature of Tribal law in Oklahoma. Accordingly, reliance on jurisdictional determinations concerning states other than Oklahoma may not lead to relevant conclusions.

Petitioner also discusses the FCC's grant of ETC designation to the Navajo Tribal Utility Authority ("NTUA")<sup>14</sup>, but again, many distinguishing factors exist in this case as well. The Navajo Nation Telecommunications Regulatory Commission ("NNTRC") was established by the Navajo Nation with authority to exercise jurisdiction over matters of the telecommunications industry and services on the Navajo Nation. Further, NTUA has submitted to the jurisdiction over its operations by the NNTRC. In this instance, Redwire asserts that it is subject to the

---

<sup>13</sup> *Second Further Notice Of Proposed Rulemaking, Order On Reconsideration, Second Report And Order, And Memorandum Opinion And Order*, WC Docket No. 11-42, 09-197 and 10-90, FCC 15-71, released June 22, 2015, ¶ 259.0.

<sup>14</sup> *Telecommunications Carriers Eligible for Universal Service Support, Petitions for Designation as an Eligible Telecommunications Carrier For Purposes of Participation in Tribal Mobility Fund Phase I, Second Amendment to Petition of NTUA Wireless, LLC for Designation as an Eligible Telecommunications Carrier for Lifeline Service and for Conditional ETC Status to Participate in Tribal Mobility Fund Phase I (Auction 902) on the Navajo Nation*, Order WC Docket No. 09-197, WT Docket No. 10-208, DA 14-200, released February 18, 2014.

regulatory authority and jurisdiction of the Otoe-Missouria Tribe which, according to the *Petition*, does not impose entry regulations for Redwire to operate as a telecommunications carrier and broadband provider within the Otoe-Missouria Tribal lands.<sup>15</sup> Redwire does not describe how or if the Otoe-Missouria Tribe exercises any authority over a telecommunications carrier. PUD is not suggesting that there is a requirement for some specific regulatory authority to be present in the area for which the jurisdictional question is raised and ETC designation is requested; however, the lack of any regulatory authority in this case is a significant point of differentiation between the referenced NTUA jurisdictional finding and the request in this *Petition*.

There are also distinguishing differences between the *Petition* and the FCC's finding of jurisdiction and grant of ETC designation to Standing Rock Telecommunications, Inc.<sup>16</sup> First, Standing Rock is a Commercial Mobile Radio Services ("CMRS") provider. While Redwire will be provisioning a wireless network, it is not a CMRS provider. Second, the Standing Rock request was for designation "within the boundaries of the Standing Rock Reservation."<sup>17</sup> Redwire is not seeking authority for a service area involving a Reservation.

## **II. Specific Area Requested for Designation**

PUD believes that the description of the service area for which the Petitioner requests the FCC take jurisdiction and grant ETC designation lacks the legible detail necessary to make clear determinations as to where the universal service obligations will apply. PUD's best understanding of the requested service area in the *Petition*, which is represented as reflecting the Otoe-Missouria Tribal lands, seems to be inconsistent with the Historical Map of Oklahoma

---

<sup>15</sup> *Petition*, pg. 2.

<sup>16</sup> *Memorandum Opinion and Order Standing Rock Telecommunications, Inc. Petition for Designation as an Eligible Telecommunications Carrier*, WC Docket 09-197, DA 10-1601, released August 24, 2010.

<sup>17</sup> *Id.*, ¶ 10.

1870-1890 (“Oklahoma Historical Map”), which is the map that the FCC previously utilized to establish the geographic boundaries of the “former reservations in Oklahoma.”<sup>18</sup> A copy of the Oklahoma Historical Map is included here as Attachment A. PUD notes that the legend provides “No. 12 Otoes and Missourias located here 1881.” PUD also notes that the *Petition* identifies an area in Kay County, Township 29 North, Range 2 East that is to be considered part of the service area for which the FCC is to consider taking jurisdiction and granting ETC designation. This area appears to be located well north of where the Oklahoma Historical Map would identify the boundaries for the Otoes and Missourias Tribal land.

PUD would suggest that the service area being considered should be clearly identified at a level of detail that allows for a high degree of confidence that the service area involved in the request is unquestionably part of the Otoes and Missourias Tribal land. As the FCC notes, “[p]etitioners seeking an eligibility designation under section 214(e)(6) for service provided on tribal lands must accurately describe the specific geographic areas they wish to serve, and must demonstrate that such areas satisfy the definition of tribal lands we adopt in this Order.”<sup>19</sup>

### **III. Failure to Meet Administrative Requirements**

PUD would point out that the Petitioner did not satisfy the requirement to provide a copy of its petition to the OCC, despite indicating on its Certificate of Service that a copy had been provided to the PUD Director. Nor, to the best of PUD’s knowledge, did the FCC meet its obligation to provide a copy of the public notice associated with this *Petition*. The FCC makes these requirements quite clear, “the petitioner must provide copies of its petition to the appropriate state commission at the time of filing with the Commission. The Commission will release, and publish in the Federal Register, a public notice establishing a pleading cycle for

---

<sup>18</sup> *Supra*, n 13, ¶ 257.

<sup>19</sup> *Twelfth Report and Order*, ¶ 125.

comments on the petition. The Commission will also send the public notice announcing the comment and reply dates to the affected state commission by overnight express mail to ensure that the state commission is notified of the notice and comment period.”<sup>20</sup> Included with these comments as Attachment B, is the Affidavit of Brandy Wreath, Director of the PUD, attesting to the fact that these administrative requirements were not met.

### **Conclusion**

For the reasons stated above, PUD asserts that the Petitioner has not met its burden to provide adequate support to allow the FCC to determine that it can take jurisdiction, which is a threshold question to be answered prior to any consideration of ETC designation. Accordingly, the FCC should find that the Petitioner has not met its burden of proof and decline to take jurisdiction and direct the Petitioner to the OCC where the Petitioner could supplement its ETC designation application filed with the OCC on February 22, 2019 in Cause No. PUD 201900009 to include the areas for which it seeks designation here.<sup>21</sup> If the FCC does not direct the Petitioner to the OCC, it should, at a minimum, require the Petitioner to further clarify and support its contention that the OCC has no jurisdiction in order for the FCC to perform the required analysis of the jurisdictional question.

In support of a finding that the Petitioner should be directed to seek ETC designation from the OCC, PUD would note that, to date, the OCC has received sixteen (16) applications for ETC designation associated with winners from the Connect America Fund Phase II auction. Of those applications, the OCC has reviewed and granted ETC designation in thirteen (13) requests prior to the February 25, 2019 deadline for such carriers to demonstrate to the FCC that they hold

---

<sup>20</sup> *Twelfth Report and Order*, ¶ 120.

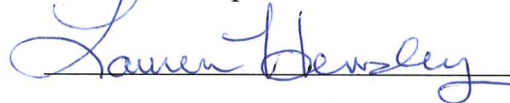
<sup>21</sup> This alternative resolution is provided for in the *Twelfth Report and Order* at ¶ 121, “If the carrier fails to meet its burden of proof that it is not subject to the state commission’s jurisdiction, the Commission will dismiss the request and direct the carrier to seek designation from the appropriate state commission.”



ETC designation. Of the three (3) applications that remain pending, one Application awaits an order in a related case to establish common carrier status prior to processing the request for ETC designation, another case was filed on December 17, 2018 and now has an intervenor, adding time to the administrative process, and the third is the above referenced application by Redwire that was just filed on February 22, 2019. PUD mentions this as the OCC is, and has been, sensitive to the FCC's request that, in these situations, the state commissions act within six months to resolve such requests as expeditiously as possible. To date, the OCC has resolved similar requests within approximately ninety (90) days.<sup>22</sup>

Respectfully submitted,

Public Utility Division,  
Oklahoma Corporation Commission



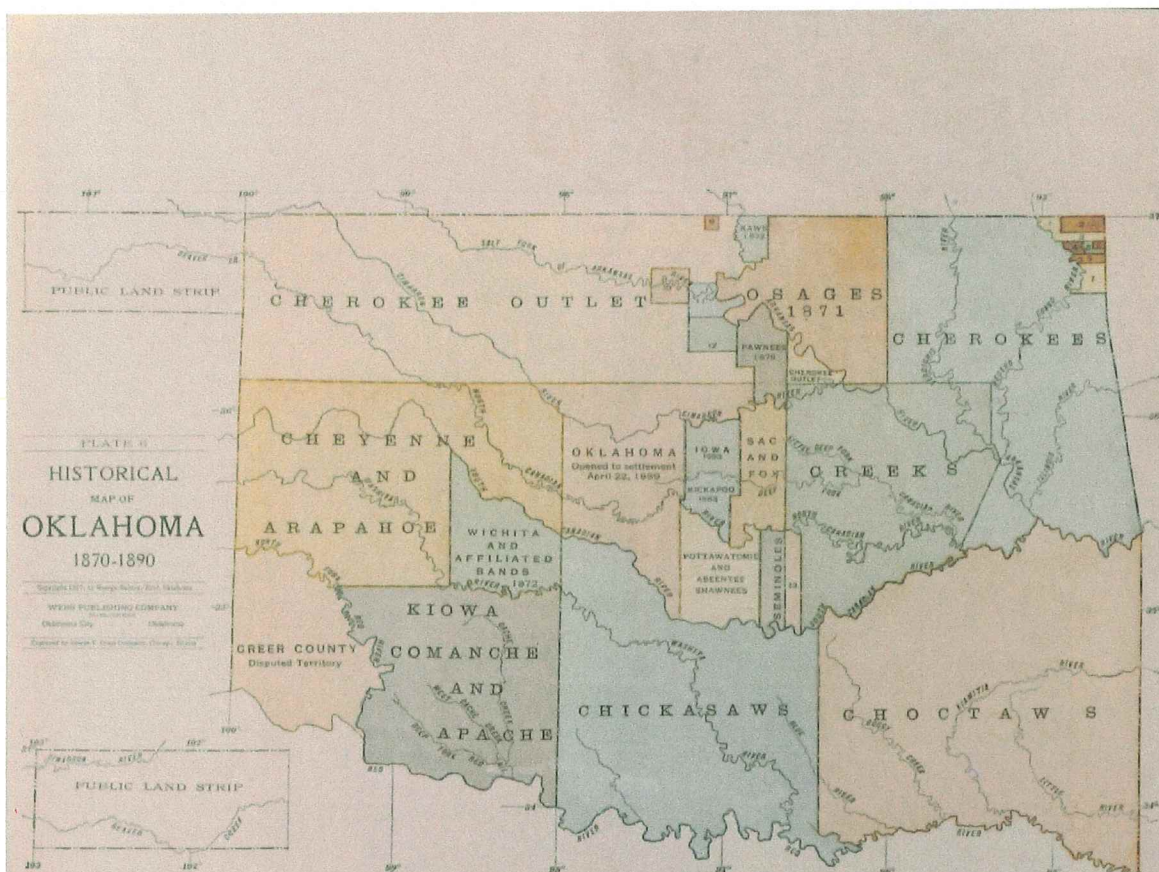
Lauren D. Hensley, OBA No. 31584  
l.hensley@occmcc.com  
Assistant General Counsel  
Oklahoma Corporation Commission  
Post Office Box 52000  
Oklahoma City, Oklahoma 73152-2000  
Tel. (405) 522-8954

/s/ Mark Argenbright

Mark Argenbright  
m.argenbright@occmcc.com  
Telecom Manager  
Public Utility Division  
Oklahoma Corporation Commission  
405-522-3378

---

<sup>22</sup> PUD recognizes that the February 25, 2019 deadline has passed and that the Petitioner will likely need a waiver of this deadline from the FCC.



1870-1890

The Osage reservation was set apart by executive order March 27, 1871, and was purchased from the Cherokees as being a part of their reservation west of the 98th meridian. This reserve also included the Kaw reservation as shown on this plate

The Absentee Shawnees were provided a home on the Pottawatomie reservation by Act of Congress May 23, 1872.

Some of the Seminoles having settled east of the east line of their reservation as defined by treaty made in 1866, a purchase of an additional 175,000 acres was made for them from the Creeks in 1873. This purchase is designated on this plate by the number 13.

No. 8 shows land ceded for Modoc occupancy 1874.

No. 9 shows 13 sections set apart for Chillico Indian Industrial School 1884.

No. 10 Nez Perce reservation from 1878 to 1884. Tonkawas were placed on this reservation 1884.

No. 11 Poncas located here 1881.

No. 12 Otoes and Missourias located here 1881.

Nos. 1, 2, 3, 4, 5, 6 and 7 are shown on plate 5.

ATTACHMENT B

BEFORE THE FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554

In the Matter of )  
)  
Telecommunications Carriers Eligible to Receive ) WC Docket No. 09-197  
Universal Service Support )  
)  
Petition of Redwire, Inc., for Designation as an )  
Eligible Telecommunications Carrier Pursuant to )  
Section 214(e)(6) of the Act. )

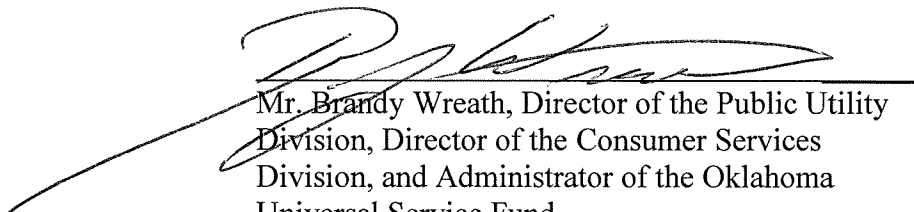
**AFFIDAVIT**

STATE OF OKLAHOMA )  
) ss:  
COUNTY OF OKLAHOMA )

I, Mr. Brandy Wreath, of Oklahoma City, Oklahoma, of lawful age, being first duly sworn upon oath hereby states:

1. That I am employed by the Oklahoma Corporation Commission as the Director of the Public Utility Division, the Director of the Consumer Services Division, and the Administrator of the Oklahoma Universal Service Fund;
2. My business address is P.O. Box 52000, Oklahoma City, OK 73105-2000;
3. The Certificate of Service attached to the Petition filed by Redwire, Inc. indicates that I was to be sent a copy of the Petition through service via overnight courier sent February 15, 2019;
4. To date, I have not received a copy of the Petition from Redwire, Inc. via overnight courier or any other means of delivery;
5. To date, I have not received a copy of the Petition via overnight courier or any other means of delivery from the Federal Communications Commission, nor am I aware of such notice being provided to any other person employed at the Oklahoma Corporation Commission; and
6. I first became aware of this Petition on February 21, 2019 after seeing trade publication coverage of the FCC's Public Notice DA 19-101, released February 20, 2019.

IN WITNESS WHEREOF, Brandy Wreath has executed this Affidavit this 5 day of March, 2019.

  
Mr. Brandy Wreath, Director of the Public Utility  
Division, Director of the Consumer Services  
Division, and Administrator of the Oklahoma  
Universal Service Fund

**ACKNOWLEDGEMENT**

STATE OF OKLAHOMA       )  
  )  
COUNTY OF OKLAHOMA    )

SUBSCRIBED AND SWORN to before me this 5<sup>th</sup> day of March, 2019.

Susan Harwell  
Notary Public

My Commission Expires:

10/27/22

